

Chapter 22. Ethics, Code of

[HISTORY: Adopted by The Commissioners of St. Michaels 2-23-1982 by Ord. No. 133. Amendments noted where applicable.]

§ 22-1. Title.

This chapter shall be known and may be cited as the "Public Ethics Ordinance."

§ 22-2. Definitions and word usage.

- A. When not consistent with the context, the words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include plural number. The word "shall" is always mandatory and not merely directory.
- B. For the purpose of this chapter, the following words, terms, phrases, and their derivations shall have the meanings given herein:

DEPARTMENT HEAD

A Town employee directly in charge of the St. Michaels Police Department and the Town employee directly in charge of the St. Michaels Public Works Department.

TOWN

The municipal corporation known as "The Commissioners of St. Michaels" which constitutes the government of the Town of St. Michaels, Maryland.

TOWN EMPLOYEE

A person employed by the Town on a full-time or part-time basis, rather than a consulting basis.

[Amended 6-7-2006 by Ord. No. 337]

TOWN INSPECTOR

The Town's Building Inspector, Health Officer, and Zoning Inspector.

[Amended 9-12-2007 by Ord. No. 368]

TOWN OFFICIAL

Persons elected or appointed to the position of membership upon that public body of the Town known as "The Commissioners of St. Michaels," or upon any administrative board or commission of the Town having decisionmaking authority.

[Amended 10-23-1984 by Ord. No. 156]

§ 22-3. Applicability.

[Amended 10-23-1984 by Ord. No. 156]

Generally, unless otherwise stated, the provisions of this chapter shall apply to every Town official, Town inspector, and Town employee.

§ 22-4. Ethics Commission.

There shall be a Town Ethics Commission which shall be composed of three members who shall serve at the pleasure of and be appointed by resolution of The Commissioners of St. Michaels, which resolution shall become effective immediately upon reading and passage at a single meeting by The Commissioners of St. Michaels. The Commission shall be advised by the Town Attorney and shall have the following responsibilities:

- A. To devise, receive and maintain all forms generated by this chapter;
- B. To provide published advisory opinions to persons subject to this chapter as to the applicability of this chapter to them;
- C. To process and make determinations as to complaints filed by any person alleging violations of this chapter;
- D. To conduct a public information program regarding the purposes and application of this chapter.

§ 22-5. Conflicts of interest.

[Amended 10-23-1984 by Ord. No. 156]

No Town official, Town inspector or Town employee shall:

- A. Participate on behalf of the Town in any matter which would, to their knowledge, have a direct financial impact, as distinguished from the public generally, on them, their spouse or dependent child, or a business entity with which they are affiliated.
- B. Hold or acquire an interest of either \$5,000 or 25% or greater in a business entity that has or is negotiating a contract of \$5,000 or more with the Town or is regulated by their agency, except as exempted by the Commission where the interest is disclosed pursuant to § 22-6 of this chapter.
- C. Be employed by a business entity that has or is negotiating a contract of more than \$5,000 with the Town or is regulated by their agency, except as exempted by the Commission pursuant to § 22-6 of this chapter.
- D. Hold any outside employment relationship that would impair their impartiality or independence of judgment.
- E. Represent any party, for a contingent fee, before any Town body.
- F. Within one year following termination of Town service, act as a compensated representative of another in connection with any specific matter in which he or she participates substantially as a Town official or employee.
- G. Solicit any gift or accept gifts of greater than \$25 in value from any person that has or is negotiating a contract with the Town or is regulated by their agency, except when these gifts would not present a conflict of interest as determined by the Commission. For the purposes of this section, "gift" includes the transfer of anything of economic value, regardless of form without adequate and lawful consideration.
- H. Use the prestige of their office for their benefit or that of another.
- I. Use confidential information acquired in their official Town position for their own benefit or that of another.

§ 22-6. Financial disclosure.

- A. The Town Clerk, Town Manager, and every Town official, Town inspector and department head shall annually, not later than January 31 of each calendar year during which he or she holds office beginning on January 31, 1983, file a statement with the Commission disclosing any gifts received during the preceding calendar year from any person known by said Town Clerk, Town Manager, Town official, Town inspector, or department head to have a contract with the Town or any person regulated by his or her agency. The statement shall identify the donor of the gift and its approximate retail value at the time of receipt.
[Amended 10-23-1984 by Ord. No. 156]
- B. Candidates seeking election as a member of The Commissioners of St. Michaels shall file statements consistent with the requirements of Subsection A of this section at the time they file their certificate of candidacy.
- C. All officials and employees to whom this chapter is applicable and all candidates for elective office to positions subject to this chapter shall file a statement with the Commission disclosing any interest or employment the holding of which would require disqualification from participation pursuant to § 22-5 (Conflicts of interest) of this chapter, sufficiently in advance of any anticipated action to allow adequate disclosure to the public.
- D. Disclosure statements filed pursuant to this section shall be maintained by the Commission as public records available for public inspection and copying.

§ 22-7. Exemptions and modifications.

The Commission may grant exceptions and modifications to the provisions of § 22-5 (Conflicts of interest) of this chapter and § 22-6 (Financial disclosure) of this chapter if it determines that application of those provisions would:

- A. Constitute an unreasonable invasion of privacy;
- B. Significantly reduce the availability of qualified persons for public service; and
- C. Not be required to preserve the purposes of this chapter.

§ 22-8. Enforcement.

- A. The Commission may issue a cease-and-desist order against any person found to be in violation of this chapter and may seek enforcement of this order in the Circuit Court for Talbot County. The court may issue a cease-and-desist order and may also impose penalties pursuant to § C-21A of the Charter for any violation of the provisions of this chapter.^[1]

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

- B. A Town official or employee found to have violated this chapter may be subject to disciplinary or other appropriate personnel action, including suspension of the Town salary or other compensation.

St. Michaels Ethics Commission Rules of Procedure

§ 1 Advisory opinion.

A. Procedure. Any person subject to the Code of Ethics may make a written request to the Commission for an advisory opinion concerning the application of the provisions of this chapter, specifically, whether or not specific conduct violates the provisions of the Ethics Code. The Commission shall respond to the request within ninety (90) days of its receipt, or as soon thereafter as is practical.

B. Issues. In an advisory opinion, the Commission shall limit its findings to matters of law. The Commission's interpretation of these provisions and its opinion shall be based on the facts provided by the person or reasonably known to the Commission. The Commission shall not make any findings of fact regarding the intent of any person in an advisory opinion.

C. Effect. Until amended or revoked, an advisory opinion shall be binding on the Town, the Town Commissioners and the Ethics Commission in any subsequent actions concerning the person who sought the opinion and who acted on it in good faith, unless material facts were omitted or erroneously presented in the request for the opinion. The advisory opinion shall not be binding in any court action initiated by any private citizen, or upon the State in any criminal prosecution.

D. Confidentiality. Copies of the advisory opinion shall be submitted to the Commissioners of St. Michaels and be made available to the public within five (5) working days after the opinion has been rendered. However, the name of the person requesting the opinion and the names of all persons or business entities mentioned in the opinion shall be redacted and deemed confidential information and shall not be disclosed by the members of the Commission unless each person or business entity waives such confidentiality.

§ 2 Procedures for adjudicating alleged violations.

The investigation and adjudication of alleged violations of the Code of Ethics shall proceed as follows:

A. Complaint.

(1) Who may file. Any person may file a written Complaint, executed under oath, with the Commission alleging a violation of any of the provisions of the Code of Ethics. The Commission may also consider possible violations of the Code of Ethics on its own initiative. The Complaint shall be filed with the Town Manager. In the event that the Complaint asserts a violation of ethical conduct on the part of the Town Manager, the Complaint shall be filed with the Town Attorney.

(2) Contents. The Complaint must assert sufficient clear and detailed facts that if proven true would constitute a violation of the provisions of the Code of Ethics. The Complaint shall cite, to the extent possible, the specific Code provisions allegedly violated. Complaints initiated by the Commission shall be signed by the Chair. The Town Manager or Town Attorney shall forward all Complaints to Ethics Counsel for preliminary review. If a Complaint is not executed under oath or fails to allege facts that would support a reasonable person in concluding that a violation of this chapter may have occurred, Ethics Counsel shall recommend that the Commission dismiss the Complaint. The Commission shall inform the Complainant of its decision to dismiss the complaint within thirty (30) days of receiving a Complaint.

(3) Limitation on actions. No Complaint shall be processed if filed more than one (1) year from the date of the action alleged to constitute a violation, unless the alleged violation is continuing in nature.

B. Ethics Commission review. If Ethics Counsel and the Commission determine that there is a reasonable basis for believing that a violation has occurred, then a copy of the Complaint shall be mailed to the subject of the Complaint ("the Complainant"), who shall be afforded an opportunity for a hearing conducted on the record. Upon making a determination hereunder, the Commission shall advise the person making the Complaint and the person the subject thereof ("the Respondent").

(1) In the event the matter is referred for a hearing, the Commission shall notify the parties of the hearing date.

(2) Prior to the hearing date the Ethics Counsel may provide the Respondent with an opportunity to take corrective action which may be available to cure all violations alleged in the Complaint, provided that the Ethics Counsel finds such action is not contrary to the purposes of this Article and is consistent with applicable law. If, within fifteen (15) days of said notice, the Respondent takes the corrective action suggested by Ethics Counsel, the Complaint may be dismissed.

B. Hearing.

(1) Timing. A hearing shall be held within forty-five (45) days, or as soon thereafter as practical, following the determination by the Ethics Counsel or Commission that there exists a reasonable basis for believing an ethical violation may have occurred. The Commission may grant postponements for good cause.

(2) The hearing shall not be open to the public unless both parties consent. All testimony and evidence shall be offered under oath. An audio or video recording of the hearing shall be retained by the Commission.

(3) At the hearing, the Ethics Counsel shall present to the Commission all evidence available relating to allegations of the Complaint. The Respondent may be represented by counsel. The Respondent charged in the Complaint has the right to attend the hearing, to make a statement, to present evidence and testimony, and to cross-examine witnesses. The Commission shall adhere to the Maryland Rules of Evidence in response to any objections raised during the course of the proceedings.

(4) Standard of proof. The issue at a final hearing shall be whether a violation of the Code of Ethics has occurred. The Commission shall make its determination based on the preponderance of the evidence in the record of such hearing. Ethics Counsel may recommend to the Commission such disposition of the Complaint as appears appropriate.

(5) Decision. After consideration of the evidence, the Commission shall prepare written findings of fact and conclusions of law with respect to each of the alleged violations. Upon a finding of a violation, the Commission may take any enforcement action provided in the Code of Ethics. If at any time during the hearing, the Commission determines that there is an ambiguity in the law that prevents it from making a determination of whether a violation has occurred, and that there was no apparent intent to violate the code, the Complaint shall be dismissed. In this event, the Commission shall report its determination that an ambiguity exists to the Town Attorney and the Commissioners of the Town of St. Michaels. A copy of the report shall be mailed to the Complainant and Respondent within five (5) business days from the date of the decision. The report shall be made available to the public and a copy submitted to the Commissioners of the Town of St. Michaels within ten (10) business days from the date of the decision.

D. Appeals. Any Respondent aggrieved by a final determination of the Ethics Commission shall have the right to appeal such final determination to the Circuit Court of Talbot County, Maryland. The notice of appeal must be filed within thirty (30) days of the date of the written decision of the Ethics Commission.

WHAT IS AN ADVISORY OPINION AND WHO CAN OBTAIN ONE?

An advisory opinion is available upon written request and is *only* to individuals that are actually subject to the Ethics Code. An advisory opinion is a written determination by the Ethics Commission whether or not specific actual or contemplated conduct violates the provisions of the Ethics Code. A letter to the Ethics Commission at the address above is all that is required to obtain an opinion. If the advisory opinion involves any conduct that may involve the Town Manager, the letter requesting the advisory opinion may be directed to Ethics counsel for the St. Michaels Ethics Commission- MacLeod Law Group 410-810-1381

WHAT IS AN ADVISORY OPINION BASED ON?

An advisory opinion is solely based on the facts provided by the person submitting the request or reasonably known to the Commission. The Commission does not make any findings of fact regarding the intent of any person. The Commission does not institute any investigation in to the facts set forth in the letter other than that which is presented by the person requesting the opinion.

WHAT IS THE EFFECT OF THE ADVISORY OPINION?

Until it is amended or revoked, an advisory opinion is binding on the Town, the Town Commissioners and the Ethics Commission in any subsequent actions concerning the person who sought the opinion and who acted on it in good faith, unless material facts were omitted or erroneously presented in the request for the

opinion. The advisory opinion is not binding in any court action initiated by any private citizen, or upon the State in any criminal prosecution.

IS AN ADVISORY OPINION CONFIDENTIAL?

Partially. Copies of the advisory opinion will submitted to the Commissioners of St. Michaels and be made available to the public within five (5) working days after the opinion has been rendered. However, the name of the person requesting the opinion and the names of all persons or business entities mentioned in the opinion are redacted and deemed confidential information and will not be disclosed by the members of the Commission unless each person or business entity waives such confidentiality. However, depending on the facts of the situation, and given the small size of our community, it may be relatively simple for someone to determine the parties discussed in an advisory opinion, even with redactions made.

WHAT IF I HAVE MORE QUES- TIONS?

You are encouraged to feel free to contact the Town Manager or Ethics Counsel with any questions regarding the procedures described herein. The Town Manager, Jean Weisman (410-745-9535) and Ethics Counsel, MacLeod Law Group (410-810-1381) cannot provide legal advice to you, and you should consult with your own legal counsel regarding any other queries.

The St. Michaels Ethics Commission

300 Mill Street, P. O. Box 206 St.
Michaels, MD 21663
Phone: 410-745-9535
Fax: 410-745-3563

The St. Michaels Ethics Commission

Frequently Asked Questions and Answers on Filing Ethical Complaints & Obtaining Advisory Ethical Opinions



The Commissioners of St. Michaels holds invaluable the ethical obligations that the Code of Ethics of St. Michaels places upon all of the Town's officials and employees. To aid in the enforcement of the Code, the St. Michaels Ethics Commission was created in order to provide published advisory opinions to persons subject to the Ethics Code and to process and make determinations as to complaints filed by any person alleging violations of the Ethics Code. This document is designed to answer some of the most frequently asked questions regarding proceedings before the Ethics Commission.

WHO CAN FILE AN ETHICS COMPLAINT?

Any person may file a written Complaint alleging a violation of any of the provisions of the Code of Ethics. <http://ecode360.com/7036447>. The Complaint must be in writing and filed with the Town Manager at 300 Mill Street, P. O. Box 206 St. Michaels, MD 21663. In the event that the Complaint asserts a violation of ethical conduct on the part of the Town Manager, the Complaint shall be filed with the Town Attorney: Charles Macleod, Esq., MacLeod Law Group 120 Speer Rd Suite 1, Chestertown, Maryland 21620.

WHAT MUST BE CONTAINED IN THE COMPLAINT?

The Complaint must assert sufficient clear and detailed *facts* that if proven true would constitute a violation of the provisions of the Ethics Code. The alleged wrongful conduct must be alleged to have occurred within one (1) year from the date of the filing of the Complaint, unless the alleged violation is continuing in nature. The Complaint shall cite, to the extent possible, the specific Code provisions allegedly violated. The Complaint must be executed under oath, *i.e.* before a notary public (available free of charge at the Town office).

WHAT HAPPENS AFTER I FILE A COMPLAINT?

The Town Manager or Town Attorney will forward all Complaints to Ethics Counsel for preliminary review. If the Complaint is not executed under oath, or fails to allege facts that would support a reasonable person in concluding that a violation of this chapter may have occurred, Ethics Counsel will recommend within thirty (30) days that the Commission dismiss the Complaint. If Ethics Counsel and the Commission determine that there is a reasonable basis for believing that a violation has occurred, then a copy of the Complaint shall be mailed to the person that is the subject of the Complaint and the matter will be set for a hearing within forty-five (45) days.

Prior to the hearing date the Ethics Counsel may provide the person charged with the alleged wrongful conduct with an opportunity to take corrective action which may be available to cure all violations alleged in the Complaint. If within fifteen (15) days of said notice, the party takes the corrective action suggested by Ethics Counsel, the Complaint may be dismissed.

WHAT CAN I EXPECT AT THE HEARING?

The hearing will not be open to the public unless all parties consent. All testimony and evidence shall be offered under oath. The Commission will retain an audio or video recording of the hearing.

At the hearing, Ethics Counsel will present to the Commission all evidence available relating to allegations of the Complaint. The person charged with the ethical violation will probably be represented by counsel, and will have the right to present testimony and evidence in support of their defense and cross-examine witnesses, including the person that has filed the Complaint. While the proceedings are not a formal court

proceeding, the Commission will adhere to the Maryland Rules of Evidence in response to any objections during the course of the proceedings. Closing arguments may be made upon the conclusion of all testimony and evidence and the hearing will conclude. No decision will be announced at the conclusion of the hearing. during the course of the proceedings. Closing arguments may be made upon the conclusion of all testimony and evidence and the hearing will conclude. No decision will be announced at the conclusion of the hearing.

WHAT CAN I EXPECT AFTER THE HEARING?

The Commission will meet and determine whether a violation of Chapter 22 of the Code of Ethics has occurred. The determination will be made on the evidentiary standard of the "preponderance of the evidence." In other words, is it more likely than not, that the violation has occurred? The Commission will prepare written findings of fact and conclusions of law with respect to each of the alleged violations and upon a finding of a violation, the Commission may take any enforcement action provided in Code of Ethics. A copy of the findings will be mailed to the parties within five (5) business days from the date of the decision and made available to the public and the Commissioners of the Town of St. Michaels within ten (10) business days from the date of the decision.

WHAT IF I DISAGREE WITH THE DECISION OF THE ETHICS COMMISSION?

Any person aggrieved by a final determination of the Ethics Commission has the right to appeal that determination to the Circuit Court of Talbot County, Maryland. The appeal must be noted within thirty (30) days from the date of the final decision.